

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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United States Court of Appeals for the
District of Columbia

JANUARY TERM, 1935

No. 6397

665

UNION COOPERATIVE INSURANCE ASSOCIATION,
A CORPORATION, APPELLANT,

vs.

MARY BANNERMAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JANUARY 17, 1935.

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May 8, 1935

United States Court of Appeals for the District of Columbia

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vs.

MARY BANNERMAN, APPELLEE.

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United States Court of Appeals for the District of Columbia

No. 6397.

UNION COOPERATIVE INSURANCE COMPANY, a Corporation,
Appellant,

vs.

MARY BANNERMAN.

a Supreme Court of the District of Columbia.

At Law.

No. 83213.

MARY BANNERMAN, Plaintiff,

vs.

UNION COOPETATIVE INSURANCE COMPANY, a Corporation,
Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 Supreme Court of the District of Columbia.

No. 83213.

MARY BANNERMAN, Plaintiff,

vs.

UNION COOPERATIVE INSURANCE ASSOCIATION, a Corporation,
Defendant.

Declaration.

Filed Sept. 18, 1933.

The plaintiff, Mary Bannerman, by her attorneys, sues the defendant, Union Cooperative Insurance Association, a

corporation organized and existing under the laws of the District of Columbia, for the sum of Three Thousand Dollars (\$3,000) for that heretofore, on to-wit, the 1st day of April, 1930, the defendant issued and delivered to Local Union No. 3, International Brotherhood of Electrical Workers of New York City, a voluntary association, in consideration of the application of the Board of Insurance Trustees of the Electrical Industry of New York, for the benefit of the members of said union, a life insurance policy known as Group Policy No. 106, wherein and whereby the defendant, in consideration of the application of said Board of Insurance Trustees of the Electrical Industry of New York, for the benefit of the members of said Union and in further consideration of the payment on the date thereof

of a monthly premium of Twenty-Five Thousand,
2 Three Hundred Twenty Dollars and Ninety Cents (\$25,320.90) and of the further payment of a monthly premium on the 1st day of each succeeding month within such term, based on the amount of insurance then in force and calculated as provided in said policy, did promise and undertake that upon due proof of the death of any member of said Local Union No. 3, International Brotherhood of Electrical Workers of New York City, provided said policy was then in force as to such member, to pay to the person designated as beneficiary by said insured member the sum of Three Thousand Dollars (\$3,000) and did promise and undertake to issue to said Board of Insurance Trustees of the Electrical Industry of New York for delivery to each member insured under said policy an individual certificate setting forth a statement of the amount of insurance protection to which said member was entitled and to whom it was payable, together with a provision to the effect that in case of the termination of the membership for any reason whatever, the member should be entitled to have issued to him by the defendant without further evidence of insurability and upon written application made to the defendant within thirty-one (31) days after such termination and upon payment of the premiums applicable to the class of risk to which he belongs and to the form and amount of the policy at his then attained age, a policy of life insurance in any one of the forms customarily issued by the defendant, except term insurance, for an amount equal to his protection under said group insurance policy, at the time of such

termination of membership; and said defendant did promise and understate, at the option of said Board of Insurance Trustees of the Electrical Industry of New York, to continue said policy for successive yearly periods by the payment at the home office of the defendant at Washington,

3 D. C., the required monthly premium for the amount of insurance to be continued and did promise and undertake to allow a grace period of thirty-one (31) days for the payment of all premiums except the first, the provision for said grace period reading as follows:

“A grace period of thirty-one days, during which the policy will remain in full force, will be allowed in the payment of all premiums except the first. If the insured member dies within the grace period, the unpaid premium for such member for the current policy month shall be deducted from the amount payable hereunder.”

That said Board of Insurance Trustees of the Electrical Industry of New York paid to the defendant the successive monthly premiums on said policy as provided therein for the term of one (1) year and at the end of the first term the said Board exercised the option contained in said policy to continue the same and did continue the same for successive yearly periods by paying the monthly premiums at the home office of the defendant at Washington, D. C., up to and including the month of August, 1932; that on to-wit, the 1st day of April, 1930, one Robert Bannerman was a member of said Local Union No. 3, International Brotherhood of Electrical Workers of New York City, and an insured member under said Group Policy No. 106 for the sum of Three Thousand Dollars (\$3,000) and duly designated Mary Bannerman, the plaintiff herein, as the beneficiary of his insurance under said policy and, in accordance with the provisions of said policy, the defendant issued and delivered to said Board of Insurance Trustees of the Electrical Industry of New York a certificate setting forth that the life of the said Robert Bannerman was insured under the aforesaid policy of Group Insurance No. 106 and that the plaintiff, Mary Bannerman, was therein named the beneficiary; that said Robert Bannerman continued as a member of said Local Union No. 3, International Brotherhood of Electrical Workers of New York City and his life continued

4 to be insured under the terms of said policy until on
to-wit, September 19, 1932, while said policy and
certificate were in full force and effect as to said
Robert Bannerman, the said Robert Bannerman departed
this life and due proof of the death of said Robert Banner-
man was waived by the defendant in view of the fact that
Proof of Death under another policy of insurance issued
by the defendant had been furnished to it. Whereupon
there became due from the defendant to the plaintiff the
said sum of Three Thousand Dollars (\$3,000) but the de-
fendant failed and refused to pay the same and still fails
and refuses to pay the same; that said Local Union No.
3, International Brotherhood of Electrical Workers of New
York City and said Board of Insurance Trustees of the
Electrical Industry of New York have performed all the
conditions and stipulations on their part under said policy
and although the plaintiff has often requested the defend-
ant so to do, the defendant has failed and refused to pay
the plaintiff said sum of Three Thousand Dollars (\$3,000),
or any part thereof.

Wherefore, the plaintiff claims of the defendant the sum
of Three Thousand Dollars (\$3,000), plus interest thereon
from September 19, 1932, besides costs of this suit.

COLLADAY, McGARRAGHY, COLLA-
DAY & WALLACE,
JOSEPH C. McGARRAGHY,
Attorneys for Plaintiff.

5

Plea.

Filed Oct. 17, 1933.

* * * * *

Comes now the defendant, Union Cooperative Insurance
Association, a corporation, through its attorneys, James S.
Easby-Smith and Frank S. Easby-Smith, and for a plea to
the declaration herein says:

That on the 1st day of April, A. D. 1930, the defendant
issued and delivered a certain life insurance policy known
as Group Policy Number 106, but denies that it issued and
delivered the same to Local Union No. 3 of the Interna-
tional Brotherhood of Electrical Workers of New York
City, a voluntary association, and says that it issued and

delivered said life insurance policy to a Board of Trustees known as the Board of Insurance Trustees of the Electrical Industry of New York, hereinafter called the Board, which said Board represented a certain voluntary association composed of employers of members of said Local Union No. 3. Defendant further says that said life insurance policy was issued to said Board for the benefit of the members of said Local Union No. 3 in consideration of the application of said Board and in further consideration of the payment by said Board of a monthly premium, the amount thereof to be determined in accordance with
6 the provisions of said policy. Defendant further says that the provisions of said policy or contract of insurance are not correctly or fully stated in the declaration herein; and for a more complete statement of the contents of said insurance policy defendant attaches hereto a true copy of the same together with a true copy of the application of said Board, marked Exhibit "A", to be read as part of this plea.

Defendant further says that the contents of the individual certificates issued in pursuance of the provisions of said insurance policy are not fully or correctly set forth in the declaration; and for a complete and correct statement of the contents of said certificates defendant attaches hereto a true copy of the same, marked Exhibit "B", to be read as part of this plea.

Defendant further says that said policy of insurance as issued was limited to a period of one (1) year with an option to the insured, namely, said Board, to renew the same from year to year not to exceed the period of five (5) years.

Defendant admits that said policy of insurance contained a provision for a grace period as set out in the declaration; but says that the allowance of said grace period for the payment of premiums was intended to be and was and is available only to the insured, said Board, during the life of said policy, that is to say during the term or period of time when it was in effect; and was not intended to be and was not and is not available or effective as to any individual member of said group, that is to say, to the plaintiff's decedent, Robert Bannerman, or to any member of said Local Union No. 3.

Defendant admits that at the end of the first yearly term of said policy of insurance, that is to say, on the 1st day

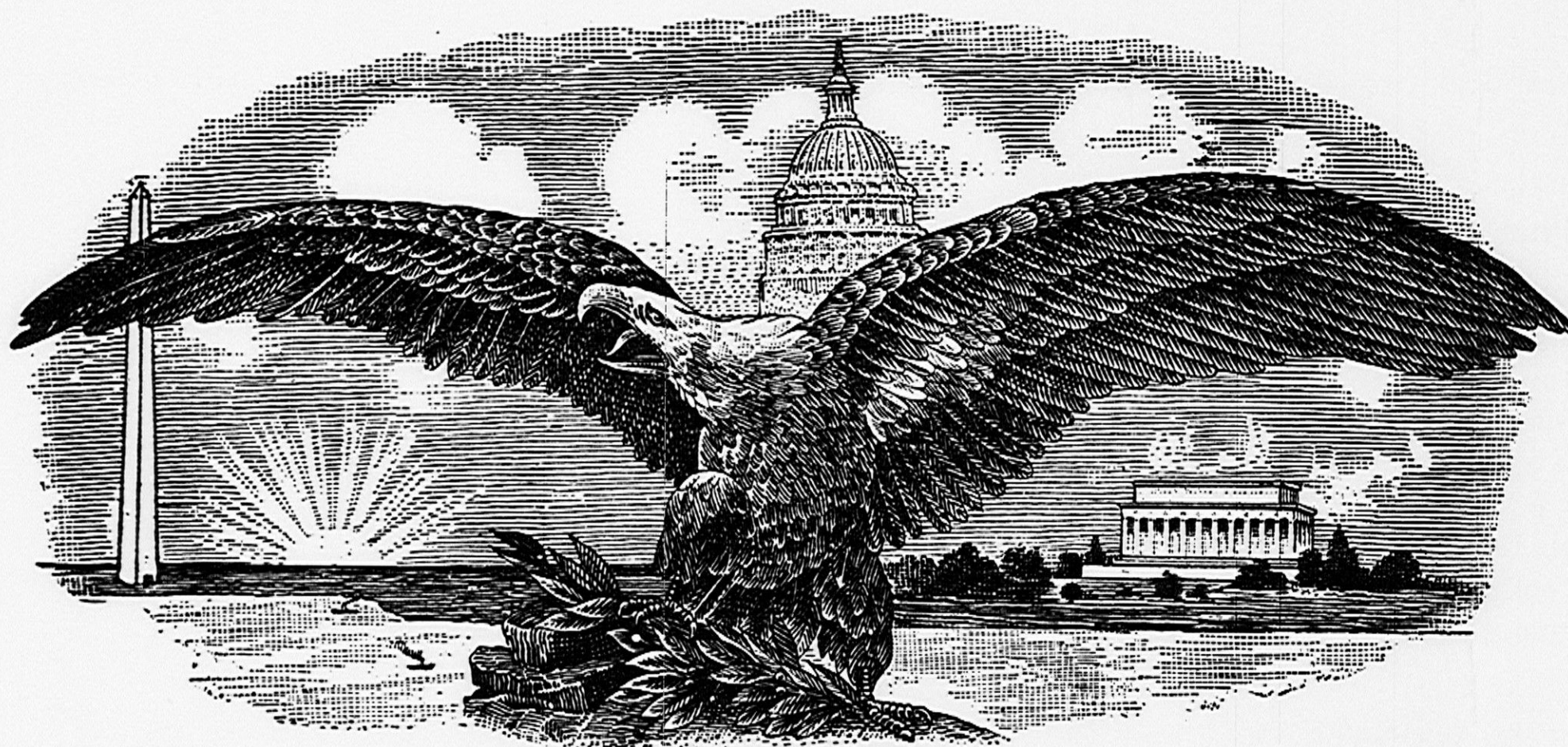
of April, A. D., 1931, the insured, said Board, did
7 exercise its option of renewing said policy of insurance for an additional term of one (1) year; and that on April 1, 1932, the insured, the said Board, again exercised its option of renewing said policy for another period of one (1) year, and paid the monthly premiums provided in said policy to and including the premium for the month of July, 1932.

Defendant further says that on to-wit the 1st day of July, 1932, the said Board notified the defendant that it could not and would not pay any further monthly premiums as provided in said policy of insurance, and further notified defendant that the policy of insurance must be terminated as of July 31, 1932; and the defendant agreed to such termination.

Defendant further says that on to-wit July 1, 1932, said Board sent to each and every member of said Local Union No. 3, including the plaintiff's decedent, a printed letter notifying each and every such member that after July 31, 1932, he would not be covered or protected by said life insurance policy.

Defendant further says that on, to-wit, July 21, 1932, the said Board notified the defendant that it would be able to pay the monthly premium for the month of August, 1932, and requested defendant to continue said policy in effect until August 31, 1932, and defendant agreed to and did accept said monthly premium for the said month of August, 1932, and agreed to continue said policy of insurance in full force and effect until the 31st day of August, 1932; and on, to-wit, July 28, 1932, the said Board sent to each member of said Local Union covered by said policy of insurance, including the plaintiff's decedent, another
letter making reference to the aforesaid letter of
8 July 1, 1932, and stating that it, said Board, would be able to pay the monthly premium on said policy of insurance for the month of August, 1932, but that: "it will not, however, be able to pay the premium on the life and disability policy after August, 1932."

Defendant further says that it agreed with said Board that the said policy of insurance would continue in effect to and until the 31st day of August, A. D., 1932, but that said policy would cease and determine on said August 31, 1932; and defendant says that said policy of insurance did



GROUP POLICY NO. 106

Union Cooperative Insurance Association of Washington, D. C.

(HEREIN CALLED THE ASSOCIATION)

HEREBY AGREES to pay an amount to be determined in accordance with the Insurance Schedule shown on page 1 of this Policy, on due proof of the death of any member of
LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
of NEW YORK CITY, a voluntary association
(herein called the Union), provided this Policy is then in force as to such member.

Any sum payable by the Association as a death claim shall be paid to the person named by the insured member as beneficiary.

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This Policy is issued for the term of ONE YEAR from the 1st day of APRIL, 1930, in consideration of the application of BOARD OF INSURANCE TRUSTEES OF THE ELECTRICAL INDUSTRY of NEW YORK (herein called the BOARD) for the benefit of the members of said Union, which application is hereby made a part of this contract and a copy of which is attached hereto, and in further consideration of the payment on the date hereof of a monthly premium of TWENTY THOUSAND EIGHT HUNDRED SIXTY-FOUR AND 85/100ths Dollars, and of the further payment of a monthly premium on the 1st day of each succeeding month within said term, based on the amount of insurance then in force and calculated as hereinafter provided.

Non-Participating.

This Policy shall not be entitled to share in the surplus earnings of the Association.

Insurance Schedule.

THREE THOUSAND DOLLARS (\$3,000.00) LIFE INSURANCE FOR EACH MEMBER OF SAID UNION; THIRTY DOLLARS (\$30.00) PER MONTH FOR TOTAL AND PERMANENT DISABILITY OCCURRING BEFORE AGE SIXTY-FIVE AND ONLY AFTER SUCH DISABILITY HAS CONTINUED FOR SIX MONTHS; ANY AMOUNTS PAID AS DISABILITY DEDUCTIBLE FROM THE AMOUNT PAYABLE AT DEATH.

Members in good standing in the Union on the policy date are immediately eligible for insurance, and those becoming members of the Union after the policy date will be eligible for insurance upon completion of THIRTY (30) days of continuous membership in the Union. Insurance shall be effective from the policy date for those who are then eligible and whose names appear on the application of the BOARD for insurance; new members and members not eligible for insurance on the policy date become insured hereunder upon receipt by the Association of a schedule giving the data in respect to such members as is required by the schedule annexed to the application for insurance, together with a certificate that such members are members of the Union in good standing and are all in good health, at the time of the submission of the supplemental schedule. Such schedule shall be sent by the BOARD to the Association monthly, on the premium date.

ONE YEAR TERM
RENEWABLE

GROUP POLICY

PREMIUMS PAYABLE MONTHLY
NON-PARTICIPATING

Form 447-30

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The BOARD..... shall promptly notify the Association in writing of the termination of the membership of any insured member.

Individual Certificates of Insurance.

The Association will issue to the BOARD..... for delivery to each member insured hereunder, an individual certificate, setting forth a statement of the amount of insurance protection to which the member is entitled and to whom it is payable, together with a provision to the effect that in case of the termination of the membership for any reason whatsoever, the member shall be entitled to have issued to him by the Association, without further evidence of insurability, and upon written application made to the Association within thirty-one days after such termination and upon payment of the premiums applicable to the class of risk to which he belongs and to the form and amount of the Policy at his then attained age, a Policy of life insurance in any one of the forms customarily issued by the Association, except Term Insurance, for an amount equal to his protection under this Group Insurance Policy, at the time of such termination of membership.

If desired the Association will issue said Policy (at the original insuring age) to bear the same date as the original insurance. In such event, the difference between the premiums for the amount of the insurance of the new Policy from the date of the original insurance, calculated at the term rates contained herein, and the premiums that would have been required under the new Policy, with five per cent (5%) interest, shall be paid to the Association.

Right of BOARD..... to Renew.

At the end of.....the first term.....the BOARD..... may at its option continue this Policy for successive yearly periods by paying in advance at the Home Office of the Association in Washington, D. C., the required monthly premium for the amount of insurance to be continued. The monthly premium payable by the BOARD..... due

each policy year
at the beginning of.....shall be determined by the table of monthly premium rates in effect hereunder, the

attained insuring age of each and all insured, and the amount of insurance to be.....continued.....; other monthly premiums due within the policy year shall be calculated on an average premium basis as hereinafter provided. At the end of five years from the date hereof, and at the end of each five year period thereafter, the Association shall have the right to establish new premium rates for the continuance of the Policy. A reduction in rates shall be effected, if experience warrants, at the end of each such period. Any reduction shall be determined by the Association and shall be based upon its classified group mortality experience. No increase in rate shall be effected except as may be determined by the Association upon the same basis.

Grace Period.

A grace period of thirty-one days, during which the Policy will remain in full force, will be allowed in the payment of all premiums except the first. If the insured member dies within the grace period, the unpaid premium of such member for the then current policy month shall be deducted from the amount payable hereunder.

Average Premium Calculation.

An average premium shall be applied in the calculation of monthly premiums due under this Policy, excepting the monthly premium falling due the 1st day of APRIL, in each and every year during the continuance of this Policy. The average premium rate is computed by dividing the aggregate monthly premium due on the 1st day of APRIL (in each year) by the number of thousands of dollars of insurance then in force. The average premium rate to be applied during the first policy year is NINETY-FIVE (95) CENTS dollars for each ONE THOUSAND Dollars (\$1,000.00) of insurance.

The monthly premium charge for additional insurance shall be payable on the first day of the policy month when such additional or increased insurance becomes effective.

Individual Termination.

The insurance upon the life of any member insured hereunder shall terminate upon the termination of his membership in good standing in the Union.

Insurance shall cease to be in force at the end of the policy month in which membership in good standing terminated, except that if said notification is received by the Association subsequent to the expiration of thirty days following the date such membership terminated, insurance shall be continued to the end of the policy month in which the notification is received by the Association. Premium charge shall cease at the end of the policy month in which insurance terminates. If through clerical error on the part of the BOARD premiums are paid after the termination of the insurance, the Association will refund all premiums paid beyond the policy month in which the insurance terminated.

Reserves.

The reserves on this Policy shall be in accordance with the American Men Experience Table, with interest computed at three and one-half per cent (3½%).

Union
Cooperative Insurance
Association

PERMANENT TOTAL DISABILITY AGREEMENT

Attached to and made a part of Group Policy No. 106 insuring the lives of
THE MEMBERS OF I.B.E.W. LOCAL UNION NO. 3 UNDER THE GROUP

POLICY ISSUED TO THE BOARD OF INSURANCE TRUSTEES OF THE
ELECTRICAL INDUSTRY OF NEW YORK, NEW YORK.
BENEFIT IN EVENT OF PERMANENT TOTAL DISABILITY OCCURRING BEFORE AGE
SIXTY-FIVE

If total disability of any member ~~or employee of member~~ insured hereunder begin before the age of sixty-five, and if due proof be furnished the Association after such disability has existed for a period of six months, and if such disability presumably will during lifetime prevent such member ~~or employee of member~~ from pursuing any occupation for wages or profit, such member ~~or employee of member~~ shall be deemed to be totally and permanently disabled within the meaning of this policy; or if any member ~~or employee of member~~ insured hereunder shall suffer the entire and irrecoverable loss of the sight of both eyes or of the use of both hands or both feet or of the use of one hand and one foot, and if proof of such loss occurring before age sixty-five be furnished to the Association, such member ~~or employee of member~~ shall be deemed to be totally and permanently disabled within the meaning of this policy.

Upon receipt of due proof at the Home Office of the Association of the total and permanent disability before age sixty-five of any member ~~or employee~~ insured hereunder the Association will waive further payment of premium for the insurance upon the life of such disabled member ~~or employee~~ and will pay to the Insured during the continuance of the said total and permanent disability a monthly income of Ten Dollars (\$10) for each One Thousand Dollars (\$1,000) of the amount of said policy until an amount equal to the face of the Policy shall have been paid. Such payments shall be in lieu of all other benefits provided for under this Policy (including the privilege of receiving a Policy upon termination of membership ~~or employment~~, as herein provided for).

Any balance of the face amount of said Policy remaining unpaid at the death of such disabled member ~~or employee~~ shall be payable to the duly designated death beneficiary.

Upon recovery of the Insured from total disability, disability benefits shall cease and the insurance shall be restored at a proportionate premium for an amount equal to the present value of the unpaid instalments.

It is a condition of this policy that the Association shall be permitted to examine any disabled member ~~or employee~~ insured hereunder at any time before such member ~~or employee~~ is admitted by the Association to be totally and permanently disabled.

Although the proof of total and permanent disability may have been accepted by the Association, the Association may from time to time demand due proof of the continuance of total disability, but not oftener than once a year. Upon failure to furnish such proof, or if at any time it shall appear to the Association that the insured is able to engage in any occupation for remuneration or profit, no further income payment shall be made nor premiums waived.

IN WITNESS WHEREOF, the Union Cooperative Insurance Association has caused this agreement to be signed by its proper officers, and duly countersigned, at the City of Washington, District of Columbia,

this 1st day of APRIL, A. D. 1930.

(SIGNED) CHAS. P. FORD

G. M. Bugmazer

Secretary-Treasurer.

Countersigned.

(SIGNED) E. R. CROWSON.

Registrar.

J. H. ...
President.



Form 360-29

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Union Cooperative Insurance Association

WASHINGTON, D. C.

Application is hereby made to the UNION COOPERATIVE INSURANCE ASSOCIATION, of Washington, D. C. (herein called the Association), by The Board of Insurance Trustees of the Electrical Industry of New York, hereinafter referred to as the "Board", said Board having been created by uniform agreements entered into between Local Union No. 3, International Brotherhood of Electrical Workers, a voluntary association with headquarters located at City of New York, State of New York and employers of members of said union New York, (herein called the Union), for group insurance upon the ONE YEAR

TERM PLAN, renewable annually at the beginning of each policy year,.....

..... as provided in the policy of insurance, with premiums payable monthly upon the lives of the members in good standing of the Union, in the amount and for the benefit stated below; and it is hereby agreed that the statements herein made and those made in the descriptive list of persons attached hereto are true and complete and that they shall form a part of the contract or policy to be issued by the Association.

Name, occupation and date of birth of each member of the Union included in this application are set forth on the schedule annexed hereto and made a part hereof.

SCHEDULE OF INSURANCE

Three thousand dollars (\$3,000.00) life insurance for each member of said union; Thirty dollars (\$30.00) per month for total and permanent disability occurring before age sixty-five and only after such disability has continued for six months; any amounts paid as disability deductible from the amount payable at death.

Board

The ~~Union~~ agrees to present for insurance the names of all future members of the Union when they complete sixty (60) days' membership.

Signed at Washington State of D. C. this 12th day of March, 1930 1930

(SIGNED) John W. Hooley, Chairman.
-- (Here state the name of the Union) --

(SIGNED) By W. F. Wieland, Sec'y-Treasurer
(Here state the name and title of the officer signing)

(SIGNED) C. L. Noyes.
(Witness)

MARY BANNERMAN,
2491 Bedford Avenue,
Brooklyn, New York,

Plaintiff

vs.

UNION COOPERATIVE INSURANCE ASSOCIATION,
a corporation,
1200 Fifteenth Street, N. W.
Washington, D. C.

Defendant

Law No. 83213

Union Cooperative Insurance Association



Home Office
Washington, D. C.



GROUP POLICY No. 106

ISSUED TO
BOARD OF INSURANCE TRUSTEES OF
THE ELECTRICAL INDUSTRY OF
NEW YORK, NEW YORK

FOR THE BENEFIT OF MEMBERS
OF LOCAL UNION NO. 3,
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS OF
NEW YORK, NEW YORK.

GROUP POLICY
One Year Term, Renewable
Premiums Payable Monthly
Non-Participating

Form 447-30

In event of death of a member,
notice should be given immediately
to the Association at Washington,
D. C.

It is not necessary to employ any
person to collect any amount due
under this Policy. Time and expense
will be saved by writing directly to
the Association.

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TABLE OF PREMIUM RATES FOR ONE THOUSAND DOLLARS OF INSURANCE. RATES FOR INSURANCE OF A GREATER OR LESS AMOUNT WILL BE PROPORTIONATE.

Age Nearest Birthday	Monthly Premium	Age Nearest Birthday	Monthly Premium	Age Nearest Birthday	Monthly Premium
20 Years	\$.56	41 Years	\$.87	61 Years	\$4.13
21 "	.56	42 "	.93	62 "	4.48
22 "	.58	43 "	.98	63 "	4.88
23 "	.59	44 "	1.05	64 "	5.32
24 "	.60	45 "	1.13	65 "	5.79
25 "	.62	46 "	1.21	66 "	6.29
26 "	.62	47 "	1.30	67 "	6.82
27 "	.62	48 "	1.42	68 "	7.42
28 "	.63	49 "	1.52	69 "	8.05
29 "	.63	50 "	1.61	70 "	8.74
30 "	.63	51 "	1.78	71 "	9.49
31 "	.63	52 "	1.94	72 "	10.29
32 "	.64	53 "	2.10	73 "	11.15
33 "	.64	54 "	2.27	74 "	12.08
34 "	.66	55 "	2.49	75 "	13.07
35 "	.68	56 "	2.69	76 "	14.15
36 "	.70	57 "	2.93	77 "	15.31
37 "	.72	58 "	3.20	78 "	16.55
38 "	.75	59 "	3.47	79 "	17.88
39 "	.79	60 "	3.79	80 "	19.31
40 "	.82				

Statements in Application Not Warranties.

This Policy and the application of the BOARD, a copy of which is attached hereto and made a part hereof, constitute the entire contract between the parties hereto. All statements made by the BOARD shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall avoid any insurance under this Policy or be used in defense of a claim under it, unless it is contained in the written application of the BOARD for this Policy, or supplemental schedules of new members or members not eligible for insurance on the policy date, and copies of such application and schedules are attached to this Policy when issued or when such insurance commences. Upon receipt by the Association of such supplemental schedules after the date of this Policy, a copy of each thereof shall promptly be furnished by the Association to the BOARD whose duty it shall be to attach the same, immediately upon its receipt, to this Policy, together with the previous application and schedules

Incontestability.

This Policy shall be incontestable after one year from its date of issue except for non-payment of premiums.

Admission and Correction of Age.

The age of any member insured hereunder will be admitted during the lifetime by the Association on due proof, but if not so admitted and if the age has been misstated, the amount of premium actually paid for the insurance shall be adjusted accordingly.

Change of Beneficiary.

Any insured member may designate a new beneficiary under this Policy by filing a written request for said change signed by the member and transmitted through the BOARD..., but such change shall become effective only upon receipt at the Home Office of the Association of this written request. If the insured member shall survive the beneficiary or beneficiaries named by him, the amount due under this Policy shall be paid to the executors, administrators or assigns of the insured member.

All Agreements Must be Signed by an Executive Officer.

All agreements made by the Association are signed by its President and Secretary-Treasurer. No other person can alter or waive any of the conditions of this Policy or make any agreement which shall be binding upon the Association.

CONTRACT. It is mutually understood and agreed between this Association and the Insured that this contract is and shall be deemed to have been made within the District of Columbia, and its provisions shall be construed under the laws of said District. IN WITNESS WHEREOF, THE UNION COOPERATIVE INSURANCE ASSOCIATION has by its proper

officers signed this contract in the City of Washington, District of Columbia, this 1st day of APRIL, 1930.

(SIGNED) CHAS. P. FORD
President.

(SIGNED) G. M. BUGNIAZET
Secretary-Treasurer.

Countersigned (SIGNED) E. R. CROWSON Registrar.

The typewritten provision entitled "Contract" was inserted herein prior to execution.

Union Cooperative Insurance Association

WASHINGTON, D. C.

THIS CERTIFIES that the Union Cooperative Insurance Association
has insured the life of..... ROBERT BANNERMAN.....

for the amount of..... THREE THOUSAND..... Dollars

under a Policy of Group Insurance No. 106..... issued and delivered
to BOARD OF INSURANCE TRUSTEES OF THE ELECTRICAL INDUSTRY
OF NEW YORK, N. Y.,.....

for the benefit of the members of Local Union No. 3.....
International Brotherhood of Electrical Workers.

This insurance is subject to the terms and conditions of said Policy,
and the application therefor, and is payable to the beneficiary named by
the Insured, if the Insured shall die while a member of said Union and
while the insurance is still in force.

Said Policy covers total and permanent disability benefit for dis-
ability occurring before age sixty-five.

This insurance will be terminated whenever said Insured for any
reason whatsoever ceases to be a member of said Union, or for non-
payment of premium.

The provisions on the reverse hereof are a part hereof.

Beneficiary..... MARY BANNERMAN.....
(Subject to change as provided in said Policy)

Relationship..... WIFE.....

Date.....

Certificate.....

UNION COOPERATIVE INSURANCE ASSOCIATION
By

G. M. Bugnagel

Secretary-Treasurer.

Chas. O. Ford

President.

Form 495-30

BEST COPY AVAILABLE
from the original bound volume

MARY BANNERMAN,
2491 Bedford Avenue,
Brooklyn, New York,
Plaintiff,

vs.

LAW NO. 83213.

UNION COOPERATIVE INSURANCE ASSOCIATION,
a corporation,
1200 Fifteenth Street, N. W.,
Washington, D. C.,
Defendant.

Exhibit "B"

Union
Cooperative Insurance
Association
of Washington, D. C.



*Certificate
Issued to
Members
of*

BOARD OF INSURANCE
TRUSTEES OF THE
ELECTRICAL INDUSTRY
OF NEW YORK, N. Y.



CONVERSION PRIVILEGE

In case of the termination of the membership for any reason whatsoever, the member shall be entitled to have issued to him by the Association, without further evidence of insurability, and upon written application made to the Association within thirty-one days after such termination and upon payment of the premiums applicable to the class of risk to which he belongs and to the form and amount of the Policy at his then attained age, a Policy of life insurance in any one of the forms customarily issued by the Association, except Term Insurance, for an amount equal to his protection under the Group Insurance Policy, at the time of such termination of membership.

If desired the Association will issue said Policy (at the original insuring age) to bear the same date as the original insurance. In such event, the difference between the premiums for the amount of the insurance of the new Policy from the date of the original insurance, calculated at the term rates contained herein, and the premiums that would have been required under the new Policy, with five per cent (5%) interest shall be paid to the Association.

finally cease and determine on August 31, 1932; and defendant specifically denies that said policy of insurance was in effect on September 19, 1932, the date of the death of said Robert Bannerman, plaintiff's decedent.

Defendant admits that said Robert Bannerman, plaintiff's decedent, died on September 19, 1932, and admits that defendant waived formal proof of death of said Bannerman; and finally denies that it is indebted to the plaintiff or any other person on account of the death of said Robert Bannerman in the sum of Three Thousand Dollars (\$3,000) or any sum whatsoever.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.

(Here follow Exhibits A and B, folios 9 and 10.)

11

Joinder in Issue.

Filed Nov. 11, 1933.

* * * * *

The plaintiff joins issue on the plea of the defendant filed in the above entitled cause.

COLLADAY, McGARRAGHY, COLLA-
DAY & WALLACE,
JOSEPH C. McGARRAGHY,
Attorneys for Plaintiff.

Note of Issue.

1. The title of this action is as above captioned.
2. Colladay, McGarraghy, Colladay & Wallace, 1331 G Street, Northwest, Washington, D. C., Attorneys for Plaintiff.
3. James S. Easby-Smith and Frank S. Easby-Smith, Woodward Building, Washington, D. C., Attorneys for Defendant.
4. The last pleading in this cause was filed November 11th, 1933.

COLLADAY, McGARRAGHY, COLLA-
DAY & WALLACE,
JOSEPH C. McGARRAGHY,
Attorneys for Plaintiff.

12

Notice of Trial.

Filed Nov. 11, 1933.

* * * * *

The Clerk of the Court will please calendar the above entitled cause for trial.

COLLADAY, McGARRAGHY, COLLA-
DAY & WALLACE,
JOSEPH C. McGARRAGHY,
Attorneys for Plaintiff.

13

Notice to Produce.

Filed Oct. 18, 1934.

To: Messrs. Colladay, McGarraghy, Colladay & Wallace,
Joseph C. McGarraghy, Esq.,
Attorney- for Plaintiff,
1331 G Street, N. W., Washington, D. C.

You are hereby requested to produce at the trial of the above entitled cause the original certificate issued under the group policy No. 106, mentioned in the pleadings, to Robert Bannerman, naming the plaintiff, Mary Bannerman, beneficiary; and also a printed letter dated July 1, 1932 and a printed letter dated July 28, 1932 delivered by the Board of Insurance Trustees, mentioned in said pleadings, to the members of Local Union No. 3 of the International Brotherhood of Electrical Workers in New York City, N. Y., including said Robert Bannerman. If you fail to do so, secondary evidence of the contents of said certificate and said letters will be introduced by the defendant at said trial.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.

Copy of foregoing notice received this 18th day of October, 1934.

JOSEPH M. McGARRAGHY,
Attorney for Plaintiff.

14 *Stipulation of Facts to be Supplemented by Evidence
at the Trial.*

Filed Oct. 22, 1934.

* * * * *

It is hereby stipulated and agreed by counsel for the respective parties hereto that the following facts may be ac-

cepted as proved, without the offering of testimony in support thereof, in connection with the trial of the above captioned case:

That on the 1st day of April, A. D., 1930, the defendant issued its certain life insurance policy known as Group Policy No. 106, of which it is agreed that the attached copy marked "Exhibit A" is a true copy. That on the 1st day of April, 1930, Robert Bannerman was a member of Local Union No. 3, International Brotherhood of Electrical Workers of New York City, and there was issued to him the Certificate of Union Cooperative Insurance Association, Washington, D. C., naming the plaintiff, Mary Bannerman, his wife, as beneficiary, and it is agreed that the attached "Exhibit B" is a true copy of said certificate.

Said Robert Bannerman continued as a member of said Local Union No. 3, International Brotherhood of Electrical Workers of New York City, until September 19th, 1932, when he died.

The defendant waived formal proof of death of said Robert Bannerman.

The above described Group Policy No. 106, issued by the defendant, was renewed on April 1st, 1931, for an
15 additional term of one year, and the monthly premium for each month of the second year was paid by said Board to defendant; and on April 1, 1932, said Group Policy No. 106 was renewed for another period of one year, and the Board of Insurance Trustees of the Electrical Industry of New York paid the monthly premiums provided in said policy for each month of said third year, to and including the premium for the month of July, 1932.

On September 9, 1932, said Board paid the monthly premium for the month of August, 1932, but no premium was paid or tendered thereafter.

It is further stipulated and agreed that the two (2) printed letters issued by the insured, the Board of Insurance Trustees of New York City, N. Y., dated respectively, July 1, 1932, and July 28, 1932, attached hereto and marked, respectively, Exhibit "C" and Exhibit "D", are true copies of letters sent by said Board of Insurance Trustees to each member of said Local Union No. 3, including the plaintiff's decedent, and to the defendant, and received by the plaintiff's decedent and the defendant on or about the respective dates thereof.

It is further stipulated and agreed that the letter dated March 27, 1930, addressed by C. L. Noyes, Assistant Manager of the defendant Association, to Walter F. Weiland of New York City, N. Y., Secretary of said Board of Trustees, is a true carbon copy of such letter and may be admitted in evidence in place of the original, a copy of the same being attached hereto and marked Exhibit "E"; that the letter addressed by W. F. Weiland to the President of the defendant Association dated July 7, 1932, a copy of which is attached hereto and marked Exhibit "F" was written by said Weiland and received by said defendant Association; that the carbon copy of a letter dated July 8, 1932, addressed

16 by G. M. Bugniazet, the President of defendant Association to said Weiland, a copy of which is attached hereto marked Exhibit "G" is a true copy of such letter so addressed and sent and may be received in evidence in place of the original; that a letter addressed by John W. Hooley, Chairman of said Board of Trustees, dated July 21, 1932, addressed to the President of defendant Association, copy of which is attached hereto marked Exhibit "H", is a letter so addressed by said Hooley and received by said defendant Association; that a carbon copy of a letter addressed July 25, 1932, to said Hooley by the said President of defendant Association, a copy of which is attached hereto marked Exhibit "I" is a true copy of a letter so written and sent, and may be received in evidence in place of the original.

In admitting the correctness of the documents and letters hereinbefore mentioned the plaintiff reserves the right to make any proper or legal objection to the materiality or competency of any or all such documents or letters.

JOSEPH C. MCGARRAHY,
COLLADAY, MCGARRAGHY,
COLLADAY & WALLACE,
Attorney- for Plaintiff.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.

Note: "Exhibit A" attached to plea same as "Exhibit A" attached to Stipulation of Facts.

(Here follows Exhibits B, C and D, folios 17-20.)

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

MARY BANNERMAN,
2491 Bedford Avenue,
Brooklyn, New York,
Plaintiff,

vs.

UNION COOPERATIVE INSURANCE ASSOCIATION,
a corporation,
1200 Fifteenth Street, N. W.,
Washington, D. C.
Defendant.

LAW NO. 83213

Exhibit "B"

Union
Cooperative Insurance
Association
of Washington, D. C.



*Certificate
Issued to
Members
of*

BOARD OF INSURANCE
TRUSTEES OF THE
ELECTRICAL INDUSTRY
OF NEW YORK, N.Y.



CONVERSION PRIVILEGE

In case of the termination of the membership for any reason whatsoever, the member shall be entitled to have issued to him by the Association, without further evidence of insurability, and upon written application made to the Association within thirty-one days after such termination and upon payment of the premiums applicable to the class of risk to which he belongs and to the form and amount of the Policy at his then attained age, a Policy of life insurance in any one of the forms customarily issued by the Association, except Term Insurance, for an amount equal to his protection under the Group Insurance Policy, at the time of such termination of membership.

If desired the Association will issue said Policy (at the original insuring age) to bear the same date as the original insurance. In such event, the difference between the premiums for the amount of the insurance of the new Policy from the date of the original insurance, calculated at the term rates contained herein, and the premiums that would have been required under the new Policy, with five per cent (5%) interest shall be paid to the Association.

Union Cooperative Insurance Association

WASHINGTON, D. C.

THIS CERTIFIES that the Union Cooperative Insurance Association
has insured the life of _____
_____ Filed
Oct. 22, 1934
Frank E. Cunningham, Clerk.

for the amount of _____ THREE THOUSAND _____ Dollars

under a Policy of Group Insurance No. _____ 106 _____ issued and delivered
to BOARD OF INSURANCE TRUSTEES OF THE ELECTRICAL INDUSTRY
OF NEW YORK, N. Y., _____

for the benefit of the members of Local Union No. _____ 3, _____
International Brotherhood of Electrical Workers.

This insurance is subject to the terms and conditions of said Policy,
and the application therefor, and is payable to the beneficiary named by
the Insured, if the Insured shall die while a member of said Union and
while the insurance is still in force.

Said Policy covers total and permanent disability benefit for dis-
ability occurring before age sixty-five.

This insurance will be terminated whenever said Insured for any
reason whatsoever ceases to be a member of said Union, or for non-
payment of premium.

The provisions on the reverse hereof are a part hereof.

Beneficiary _____
(Subject to change as provided in said Policy)

Relationship _____

Date _____

Certificate _____

UNION COOPERATIVE INSURANCE ASSOCIATION
By

GM Bugnagel

Secretary-Treasurer.

Chas O Ford

President.

Exhibit "6"

The BOARD of INSURANCE TRUSTEES

70 EAST FORTY-FIFTH STREET

NEW YORK CITY

8

July 1st, 1932.

Dear Sir:

By reason of your membership in Local Union No. 3, I.B.E.W., you have been covered by two policies of insurance taken out by the Board on April 1st, 1930, with Union Cooperative Insurance Association, 1200 15th St., N. W., Washington, D. C.

One policy provides for the payment of an annuity of \$40.00 per month for life to each person covered thereby upon such member attaining sixty-five years of age. The Board has continuously paid the premium on this policy from April 1st, 1930, when it went into effect, until July 1st, 1932. The Board is unable to pay the July, 1932, premium, due to lack of funds. All members who reached sixty-five years of age on or before June 30th, 1932, will, within a short time, receive from the insurance association a paid up annuity certificate of \$40.00 per month for life. Those who have not reached sixty-five years of age on June 30th, 1932, have certain rights under that policy which are stated in the policy as follows, to wit:

"Upon such cessation of coverage the member shall be entitled, upon written application made to the Association within thirty-one days, to convert this coverage to an individual annuity contract at the rate applicable to his attained age at date of original coverage under this contract."

If you exercise your right to convert to an individual annuity contract, you will get the benefit of all premium payments on this policy made by the Board on your behalf. This must be done during July, 1932.

The other policy provides for the payment of \$3000.00 life insurance upon the death of any member covered thereby and \$30.00 per month to any member covered thereby when such member becomes totally and permanently disabled before the age of sixty-five and such disability has existed for six months. Such disability payments, however, are only made to a total amount of \$3000.00 and any disability payments are deducted from the face amount of the policy payable at death.

The Board has paid the premium on the life and disability policy for the month of July, 1932, but due to lack of funds will be unable to pay the premium thereafter. This group life and disability policy provides that, upon cessation of coverage as to an individual, such person may be entitled, upon written application made to the Association within thirty-one days, to convert this insurance to an individual life insurance contract at the rate applicable to that person's attained age at the time of the application. In reality the only advantage to you under this clause of the policy is that, if you are physically uninsurable, you will have the right to obtain this insurance with this association without medical examination. You must exercise this right before August 31st, 1932, but after July 31st, 1932, you will not be covered by this life insurance policy unless you have previously exercised your rights of conversion.

It is the opinion of the Board that where any person has become eligible to the disability payment under the group policy prior to July 31st, 1932, such right will thereafter continue under that policy during such disability, even though premium is no longer paid.

The Board cannot supply to any member information as to the premium rates or costs in making the conversion, nor assist any member in so doing. Union Cooperative Insurance Association has full information as to the age of every person covered under such policies and, upon written application made by any member directly to the Insurance Association, such information will, no doubt, be furnished. Any inquiry as to your rights under either policy or any application which you may care to make should be made directly to Union Cooperative Insurance Association, 1200 15th St., N. W., Washington, D. C.

THE BOARD OF INSURANCE TRUSTEES OF THE
ELECTRICAL INDUSTRY OF NEW YORK.

By JOHN W. HOOLEY — Chairman
W. F. WIRLAND — Secretary

BEST COPY AVAILABLE
from the original bound volume

Exhibit "H"

The BOARD of INSURANCE TRUSTEES

70 EAST FORTY-FIFTH STREET

NEW YORK CITY

2

July 28th, 1932.

TO THE MEMBERS OF LOCAL UNION No. 3, I. B. E. W.:

Under date of July 1st, 1932, you were notified by this Board by letter that the premium on the life and disability policy referred to in that letter had been paid for the month of July, 1932, but that due to lack of funds the Board would be unable to pay the premium thereafter.

From time to time in the past, the law firm of Root, Clark & Buckner has acted as attorneys for the Board and such law firm is now advising the Board as to its duties in closing up the business and affairs of the Board.

Recently, the attorneys for the Board received a favorable ruling from the Commissioner of Internal Revenue, Treasury Department, Washington, D. C., relative to the Federal income tax liability of the Board. This favorable ruling releases sufficient funds of the Board so that such attorneys now advise the Board that it may and should pay the August, 1932, premium on the life and disability policy. The Board has decided to do this. It will not, however, be able to pay the premium on the life and disability policy after August, 1932.

Your protection under the life and disability policy will now be extended to and including August 31st, 1932; your rights of conversion under such policy will be extended to and including October 1st, 1932. Except for the one month's extension of protection and conversion rights to which your attention has been called by this letter, your rights under this life and disability policy are not changed.

This action of the Board in paying the premium for August, 1932, on the life and disability policy and the facts to which your attention is called in this letter, do not in any way change your rights, protection or time of conversion under the annuity policy, all as set out in the letter to you dated July 1st, 1932.

The Board cannot supply to any member information as to the premium rates or cost of making the conversion, nor assist any member in so doing. All inquiries concerning such matters should be addressed direct to "The Union Cooperative Insurance Association, 1200 15th Street, N. W., Washington, D. C."

If you have already exercised your right of conversion under the life and disability policy and paid the August, 1932, premium, we suggest that you apply to the Insurance Association for a credit of that amount, in view of the fact that the Board is paying the August, 1932, premium on the life and disability policy.

THE BOARD OF INSURANCE TRUSTEES OF THE
ELECTRICAL INDUSTRY OF NEW YORK.

By JOHN W. HOOLEY, *Chairman*
and W. F. WIELAND, *Secretary*

21

EXHIBIT "E".

Union Cooperative Insurance Association
1200 Fifteenth Street, N. W., Washington, D. C.

March 27, 1930.

Walter F. Wieland, Esq.,
70 East 45th Street,
New York, N. Y.

DEAR MR. WIELAND:

Confirming our telephone conversation of yesterday, we expect to send you the cards for the group and disability insurance, and the separate file of cards for the annuity probably tomorrow. If we cannot get these completed in time to send out tomorrow we will probably be able to send them on Saturday.

We expect to have the certificates completed, ready for delivery to you, on Monday in case you come here, otherwise we understand we are to hold the certificates here until you advise us to send them to you in New York.

The master policies will also be ready for delivery on Monday if you come here, otherwise we can mail them to you.

It is our understanding that the insurance is to be effective midnight March 31st.

We have just received a letter from Mr. Hogan with regard to the number of persons to be insured. As he does not state that he sent you a copy we have made a copy and you will find it enclosed herewith. You will see that the total number according to his records is 7,021. Our records, however, show 7,321 for the group insurance and disability, 7,007 for the annuity, and 9 for the new pension.

We plan to handle the matter as discussed with you yesterday, that is bill you for our full number and then make the adjustment and cancellations as soon as we find out just which members insured under the present group policy are not eligible for this insurance from the Insurance Trustees.

We figure the premium, therefore, as follows:

Annuity, 7,007 members, total monthly	
premium	\$51,680.76

24

EXHIBIT "G".

Union Cooperative Insurance Association,
1200 Fifteenth Street, N. W.,
Washington, D. C.

July 8, 1932.

Walter F. Wieland, Esq.,
70 East 45th Street, New York, N. Y.

DEAR MR. WIELAND:

I have your favor of the 7th inst. enclosing copy of printed letter sent to all members of Local No. 3 who were covered by the insurance of your Board, and thank you for same.

Very truly yours,

/s./ G. M. BUGNIAZET,

GMB:R.

President.

25

EXHIBIT "H".

The Board of Insurance Trustees of the Electrical Industry
of New York,
70 East Forty-fifth Street,
New York City.

John W. Hooley, Chairman. W. F. Wieland, Secretary-
Treasurer.

July 21st, 1932.

Mr. G. M. Bugniazet, President,
Union Cooperative Insurance Ass'n.,
1200 15th Street, N. W., Washington, D. C.

DEAR SIR:

The Board of Insurance Trustees, at a meeting held to-day, by advice of counsel, have passed a resolution that they will pay the August, 1932, premium on the life and disability policy. The membership of Local Union No. 3, I. B. E. W., will be notified by circular letter the first of next week concerning this change.

Mr. Wieland is away at this time, but I will get in touch with you the early part of next week.

Yours very truly,

/s./ JOHN W. HOOLEY,
JOHN W. HOOLEY,
Chairman.

JWH:R.

EXHIBIT "I".

Union Cooperative Insurance Association,
1200 Fifteenth Street, N. W.,
Washington, D. C.

July 25, 1932.

Mr. J. W. Hooley,
Board of Insurance Trustees of the Electrical Industry,
70 East 45th Street, New York, N. Y.

DEAR SIR:

I have your favor in behalf of the Board of Insurance Trustees, and note that the Board will pay the August premium on the group life insurance policy covering the members of Local No. 3.

We will forward statement the first of the month as to the amount of the payment.

Very truly yours,

GMB:R. /s./ G. M. BUGNIAZET,
President.

Stipulation Waiving Jury Trial.

Filed Oct. 22, 1934.

* * * * *

The respective parties hereto by and through their respective counsel hereby waive a jury trial of the issues in the above entitled case and agree that the case may be tried by the Court without a jury.

JOSEPH C. MCGARRAGHY,
COLLADAY, MCGARRAGHY,
COLLADAY & WALLACE,
Attorney- for Plaintiff.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.

28 Supreme Court of the District of Columbia.

Tuesday, October 23, 1934.

Session resumed pursuant to adjournment, Honorable Peyton Gordon, Justice, presiding.

* * * * *

Come now the parties hereto by their respective attorneys of record, whereupon, it is stipulated by the respective parties hereto, through their attorneys of record, that a trial by jury of the issue of the above entitled cause be waived, and it is further agreed that this cause may be tried by the Court without a jury.

And thereupon, after this cause is fully heard the Court finds for the plaintiff in the sum of Three Thousand Dollars (\$3,000.00) with interest thereon from September 19, 1932.

Whereupon, the right to file a motion for a new trial is expressly waived in open Court, and it is agreed that judgment may now be entered on the Court's finding.

Wherefore, it is considered that plaintiff recover of the defendant herein the sum of Three Thousand Dollars (\$3,000.00) with interest thereon from September 19, 1932, together with costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment the defendant by its attorney of record, in open Court, notes an appeal to the Court of Appeals of this District; whereupon, an undertaking to act as a supersedeas bond is hereby fixed in the sum of Three Thousand Five Hundred Dollars (\$3500.00), and a further undertaking to act as a cost bond is hereby fixed in the sum of One Hundred Dollars (\$100.00) with leave to deposit Fifty Dollars (\$50.00) cash with the clerk in lieu thereof.

29

Memorandum.

November 5, 1934—Undertaking an appeal approved and filed.

30 *Motion to Extend Time for Filing and
 Serving Bill of Exceptions.*

Filed Dec. 5, 1934.

* * * * * *

Comes now the defendant in the above entitled case and moves the Court to extend *nunc pro tunc* the time for filing and serving bill of exceptions until and including December 15, 1934.

And for cause of the motion refers to the affidavit annexed hereto.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
By C. V. S.,
Attorneys for Defendant.

No objection to this motion.
JOSEPH C. McGARRAGHY,
Attorney for Plaintiff.

31 *Affidavit.*

Filed Dec. 5, 1934.

DISTRICT OF COLUMBIA, ss:

I, Charles V. Shannon, being first duly sworn depose and say:

I am employed as a law clerk in the office of James S. Easby-Smith and Frank S. Easby-Smith, counsel of record in the above entitled cause and make this affidavit in support of motion to extend time for filing bill of exceptions in the above entitled case.

Said James S. Easby-Smith has been ill for several weeks last past to the extent that he has not been able to transact the usual business of his profession and Frank S. Easby-Smith has, during the same period, been necessarily absent from the District of Columbia engaged on legal business.

CHARLES V. SHANNON.

Subscribed and sworn to before me this 4th day of December, 1934.

[SEAL.]

S. A. GENTRY,
Notary Public, D. C.

32

Motion to Amend Minute Entry.

Filed Dec. 17, 1934.

* * * * *

Comes now the defendant in the above entitled cause and moves the Court to amend and correct its records in the above entitled cause in respect of the minute entry of the trial and judgment of the Court on the 23rd day of October, A. D., 1934, as such minute entry is recorded in Minute Docket 89, Folio 427, in the records of the clerk's office of this Court, in the following particular:

The said minute entry is as follows:

"Comes now the parties hereto by their respective attorneys of record, whereupon, it is stipulated by the respective parties hereto, through their attorneys of record, that a trial by jury of the issue of the above entitled cause be waived, and it is further agreed that this cause may be tried by the Court without a jury.

"And thereupon, after this cause is fully heard the Court finds for the plaintiff in the sum of Three Thousand Dollars (\$3,000.00) with interest thereon from September 19, 1932.

"Whereupon, the right to file a motion for a new trial is expressly waived in open Court, and it is agreed that judgment may now be entered on the Court's finding.

"Wherefore, it is considered that plaintiff recover of the defendant herein the sum of Three Thousand Dollars (\$3,000.00) with interest thereon from September 19, 1932, together with costs of suit to be taxed by the clerk and have execution thereof.

"From the foregoing judgment the defendant by its attorney of record, in open Court, notes an appeal to the Court of Appeals of the District; whereupon, an undertaking to act as a supersedeas bond is hereby fixed in the sum of Thirty-five Hundred Dollars (\$3,500.00), and a further undertaking to act as a cost bond is hereby fixed in the sum of One Hundred Dollars (\$100.00) with leave to deposit Fifty Dollars (\$50.00) cash with the clerk in lieu thereof.

GORDON,
Justice."

33 It is within the knowledge of the Court that this case was heard upon the stipulation of the parties and upon documentary evidence covered by said stipulation; and that no evidence was introduced either by the plaintiff or by the defendant *aliunde* said documents so stipulated.

It is moved that the minute entry be corrected, amended and amplified so as to include the following paragraph immediately succeeding the first paragraph of said minute entry, to-wit:

No evidence was offered or introduced at the trial except the documentary evidence described in said stipulation.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.

To: Joseph C. McGarraghy, Esq.,
Attorney for Plaintiff,
1331 G Street, N. W., Washington, D. C.

Please take notice that the foregoing motion will be presented to Mr. Justice Peyton Gordon of the above entitled Court on Thursday, December 20, 1934, or as soon thereafter as counsel can be heard.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.
Washington, D. C.

Receipt of copy of attached motion and notice acknowledged this 17th day of December, 1934.

JOSEPH MCGARRAGHY,
Attorney for Plaintiff.

34 *Assignment of Errors on Behalf of Defendant.*

Filed Dec. 15, 1934.

* * * * *

1. The Court erred in finding and ruling that the provision of the group or master policy granting a grace period of thirty-one (31) days to the insured insured to the benefit of the individual certificate holder, that is to say, the plaintiff's decedent.

2. The Court erred in granting judgment to the plaintiff on the evidence introduced in the case through the pleadings and stipulations.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant,
Washington, D. C.

35 *Order for Transcript of Record on Appeal.*

Filed Dec. 15, 1934.

* * * * * *

The Clerk of the Court will please prepare transcript of record on appeal in the above entitled cause and include therein:

1. The entire record or judgment roll, including all pleadings with the exhibits thereto, and all stipulations with the exhibits thereto, and all minute entries in the cause.
2. Complete copy of docket entries.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.
Washington, D. C.

36 *Motion to Strike Order for Transcript of Record on Appeal.*

Filed Dec. 19, 1934.

* * * * * *

Comes now the plaintiff and moves that the order for transcript of record on appeal filed by the defendant herein the 15th day of December, 1934, be stricken from the files and for grounds of said motion says:

That the appeal in this cause was perfected by filing a supersedeas bond on November 5, 1934, and the order for transcript of record on appeal was not filed within the time required by the rules of the Court.

COLLADAY, McGARRAGHY, COLLA-
DAY & WALLACE,
JOSEPH C. McGARRAGHY,
Attorneys for Plaintiff.

37 To: Joseph C. McGarraghy, Esq.,
Attorney for Plaintiff,
1331 G Street, N. W., Washington, D. C.

Please take notice that the foregoing motion will be presented to the Court on Friday, the 7th day of December, 1934, or as soon thereafter as counsel can be heard.

LAWRENCE J. MILLER, JR.

Receipt of copy of attached motion, affidavit and notice acknowledged this 4th day of December, 1934.

JOSEPH C. MCGARRAGHY,
Attorney for Plaintiff.

38 *Motion to Strike Assignment of Errors on Behalf
of Defendant.*

Filed Dec. 19, 1934.

* * * * *

Comes now the plaintiff and moves to strike the Assignment of Errors filed herein on the 15th day of December, 1934 and for cause of said Motion says:

That the Assignment of Errors herein was not filed within the time as required by the Rules of Court.

COLLADAY, MCGARRAGHY, COLLA-
DAY & WALLACE,
JOSEPH C. MCGARRAGHY,
Attorneys for Plaintiff.

39 Supreme Court of the District of Columbia.

Thursday, January 3, 1935.

Session resumed pursuant to adjournment. Honorable Peyton Gordon, Justice, presiding.

* * * * *

Upon consideration of the motion filed herein, to amend minute entry, it is ordered that said motion be, and the same is hereby denied.

Further, upon consideration of the motions filed herein, to strike order for transcript of record on appeal and to strike assignment of errors, it is ordered that said motions be, and the same are hereby each and severally granted.

40

Filed Jan. 7, 1935.

The Clerk of said Court will please note an appeal on the part of the defendant to the Court of Appeals of the District of Columbia from the orders of this Court entered in the above entitled cause on the third day of January, 1935; and also forthwith issue citation to Joseph C. McGarraghy, or the law firm of Colladay, McGarraghy, Colladay and Wallace, attorneys for plaintiff, at 1331 G Street, N. W., Washington, D. C., the plaintiff being a non-resident.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.

41

Supreme Court of the District of Columbia.

Monday, January 7, 1935.

Session resumed pursuant to adjournment. Honorable
Peyton Gordon, Justice, presiding.

* * * * *

Comes now the defendant by its attorney of record and moves the Court to fix the cost bond on appeal in this cause, whereupon, it is ordered that the undertaking for cost in this cause be, and the same is hereby fixed in the sum of One Hundred Dollars (\$100.00) with leave to deposit Fifty Dollars (\$50.00) cash in lieu thereof.

GORDON,
Justice.

42

Citation.

Filed Jan. 9, 1935.

The President of the United States of America to Mary
Bannerman, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal noted in the Supreme Court of the District of Columbia, on the 7th day of January, 1935, wherein Union Cooperative Insurance

Association, a Corpn., is Appellant, and you are Appellee, to show cause, if any there be, why the Judgment rendered against the said Appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alfred A. Wheat, Chief Justice of the Supreme Court of the District of Columbia, this 8th day of January, in the year of our Lord one thousand nine hundred and thirty-five.

[SEAL.]

FRANK E. CUNNINGHAM,
Clerk,

By CHAS. B. COFLIN,
Assistant Clerk.

Service of the above Citation accepted this 8th day of January, 1935.

JOSEPH C. McGARRAGHY,
Attorney for Appellee.

Memorandum.

January 9, 1935.—Undertaking an appeal approved and filed.

43 [Endorsed:] No. ——— Law. Equity. ——— vs. ————. Citation. Issued January 8, 1935. Served copy of the within Citation on attorney of record, January 8, 1935, said plaintiff being a non-resident. ———, Marshal. Frank S. Easby-Smith, Attorney for Appellant.

44 *Assignments of Error on Behalf of Defendant.*

Filed Jan. 10, 1935.

* * * * *

1. The Court erred in entering the order of January 3, 1935, striking out the assignments of error filed in the above entitled cause on December 12, 1934.

2. The Court erred in entering the order of January 3, 1935, striking out the designation of record filed in the above entitled cause on December 12, 1934.

3. The Court erred in entering the order of January 3, 1935, refusing to amend the minute entry of October 23, 1934, said refusal being an abuse of discretion.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant,
Washington, D. C.

Receipt of copy of foregoing assignments of error on behalf of defendant acknowledged this 10th day of January, 1935.

JOSEPH C. McGARRAGHY,
Attorney for Plaintiff.

45 *Additional Order for Transcript of Record
on Appeal.*

Filed Jan. 10, 1935.

* * * * *

The Clerk of the Court will please prepare transcript of record on appeal in the above entitled cause and include therein, in addition to the order for transcript of record filed in the above entitled cause on December 15, 1934, all pleadings, motions, exhibits, orders, minute entries and docket entries, filed or entered on or after December 15, 1934.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Defendant.

Receipt of copy of foregoing order for transcript of record on appeal acknowledged this 10th day of January, 1935.

JOSEPH C. McGARRAGHY,
Attorney for Plaintiff.

46 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 45, both inclusive, to be a true and correct transcript of the record, according to directions of

counsel herein filed, copies of which are made part of this transcript, in cause No. 83213 at Law, wherein Mary Bannerman is Plaintiff and Union Cooperative Insurance Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 17th day of January, 1935.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,

Clerk,

By CHAS. B. COFLIN,

Asst. Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 6397. Union Cooperative Insurance Association, a corporation, Appellant, vs. Mary Bannerman. United States Court of Appeals for the District of Columbia. Filed Jan. 17, 1935. Henry W. Hodges, Clerk.

(5892-C.)

FILED MAR 2 2 1935

Henry H. Hopkins

CLERK

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1935.

No. 6397.

UNION COOPERATIVE INSURANCE ASSOCIATION,
A Corporation, *Appellant*,

VS.

MARY BANNERMAN, *Appellee*.

BRIEF FOR APPELLANT.

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Appellant.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1935.

No. 6397.

UNION COOPERATIVE INSURANCE ASSOCIATION,
A Corporation, *Appellant*,

vs.

MARY BANNERMAN, *Appellee*.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

These are two appeals by the appellant (the defendant in the Court below and hereinafter called the defendant) from two final orders, namely:

I.

First, from a judgment of the Supreme Court of the District of Columbia entered October 23, 1934, in favor of the Appellee (hereinafter called the plaintiff) as beneficiary of her deceased husband who had been insured under a so-called group policy of insurance. The judgment was for \$3,000.00, with interest and costs (Rec. p. 15).

II.

Second, from a final order entered by the Court below in the same case January 3, 1935, striking out defendant's assignment of errors and order for transcript of record on appeal, filed December 15, 1934 (Rec. pp. 18-21).

The said assignment of errors and said order for transcript of record are included in the record (Rec. pp. 18, 19); as well as an additional assignment of errors and order for transcript of record, filed January 10, 1935 (Rec. pp. 22, 23).

THE PROCEEDINGS.

September 18, 1933, plaintiff filed her declaration (Rec. p. 1). October 17, 1933, defendant filed its plea, with exhibits (Rec. p. 4). A written stipulation between the parties as to the facts was filed October 22, 1934 (Rec. p. 8), and a jury trial was expressly waived by written stipulation of the parties (Rec. p. 14). At the conclusion of the hearing the Court below entered judgment for the plaintiff in the full sum sued for, \$3,000.00, together with interest and costs of suit (Rec. p. 15). Defendant immediately noted an appeal in open Court and a supersedeas bond was fixed at that

time, (Rec. p. 15), which was promptly executed, approved and filed November 5, 1934 (Rec. p. 15).

December 15, 1934, defendant filed its assignments of error (Rec. p. 18) and its order for transcript of record (Rec. p. 19). Plaintiff then moved to strike defendant's order for transcript of record, (Rec. p. 19), and assignments of error (Rec. p. 20).

January 3, 1935, the Court below entered its order striking defendant's assignments of error and order for transcript of record (Rec. p. 20). January 7, 1935, defendant noted an appeal from said order of January 3, 1935, (Rec. p. 21), and on January 10, 1935, filed its additional assignments of error and order for transcript of record (Rec. pp. 22, 23).

THE FACTS.

The case was tried to the Court without a jury on the pleadings and exhibits and a written stipulation of facts, including documentary evidence covered by the stipulation, and no additional testimony was offered or received (Rec. pp. 8-14).

It clearly appears that in consideration of the application of the Board of Insurance Trustees of the Electrical Industry of New York City, an employer group, (hereinafter called the "insured" or the "Board") and the payment of a specified initial premium and the further payment of successive monthly premiums to be calculated as therein specified; the defendant, on April 1, 1930, issued its certain life insurance policy, known as Group Policy No. 106, to said Board, for the benefit of its employees who were members of Local Union No. 3, International Brotherhood of Electrical Workers (hereinafter called the "Union"). (See pleadings and exhibits and stipulation and exhibits.)

On that date one Robert Bannerman (plaintiff's husband) was a member in good standing of said Union and an employee of the insured and was covered by the group policy, and as such, received from the defendant an individual certificate insuring his life for Three Thousand Dollars (\$3,000) under the terms of the Group Policy No. 106, said certificate naming plaintiff as beneficiary (Rec. p. 9).

The said group policy by its terms was to run for one year, that is, to April 1, 1931, with an option to the Board of renewal for an additional year. At the end of the first year, the Board exercised its option and renewed the policy for another year, to April 1, 1932; and at the end of the second year, the Board again exercised its option and the group policy was renewed for a third year, to April 1, 1933. The Board paid the monthly premiums provided in said policy to and including the month of July, 1932 (the fourth month of said third year) (Rec. p. 9).

On July 1, 1932, the Board sent to each and every member of the Union, including plaintiff's decedent, a printed letter notifying them that after July 31, 1932, they would not be covered or protected by said life insurance policy (Rec. seq. p. 10). On July 7, 1932, the Board sent defendant several copies of said letter of July 1, 1932, thereby informing defendant that it could not and would not pay any further monthly premiums as provided in the Group Policy and that said policy must be terminated as of July 31, 1932 (Rec. p. 12).

On July 21, 1932 (while the group policy was still in effect) the said Board notified the defendant that it would be able to pay the monthly premium for the month of August, 1932, and requested defendant to

continue said policy in effect until August 31, 1932 (Rec. p. 13), to which defendant agreed (Rec. p. 14). On July 28, 1932, (while the group policy was still in effect) the Board sent another printed letter to each member of the Union, including plaintiff's decedent, making reference to the aforesaid printed letter of July 1, 1932, and notifying them that the Board would be able to pay the monthly premium on said group policy for the month of August, 1932, but that: "It will not, however, be able to pay the premium on the life and disability policy after August, 1932" (Rec. seq. p. 10).

On September 9, 1932, the said Board paid the monthly premium for the month of August, 1932, but no premium was paid or tendered thereafter (Rec. p. 9).

The said group policy provided for a grace period of thirty-one days as follows:

"A grace period of thirty-one days, during which the policy will remain in full force, will be allowed *in the payment of all premiums except the first*. If the insured member dies within the grace period, the unpaid premium for such member for the current policy month shall be deducted from the amount payable hereunder" (Rec. seq. p. 6). (Italics supplied.)

The individual certificate issued to members of the Union, including plaintiff's decedent, provided for a conversion privilege by which the insured individual had the right, upon application made to the defendant within thirty-one (31) days after the termination of insurance, and without further evidence of insurability, to receive an individual insurance policy in the amount in which he was protected under the group

policy upon payment of premium at his attained age (Rec. seq. p. 6).

The plaintiff's decedent, Robert Bannerman, died on September 19, 1932. The plaintiff contends that the foregoing grace period applies to the individual members of the Union and hence continued the group policy in effect for thirty-one days after its termination on August 31, 1932, during which period said decedent died. The defendant contends that the foregoing grace period applies only to the insured, the Board, and not to the individual members of the Union, including plaintiff's decedent, and hence that said policy was not in effect as to said decedent at the time of his death on September 19, 1932.

The construction and effect of the aforesaid grace period is the only issue in the case.

ASSIGNMENT OF ERRORS.

The Court erred as follows:

1. In finding and ruling that the provision of the group or master policy granting a grace period of thirty-one (31) days to the insured insured to the benefit of the individual certificate holder, that is to say, the plaintiff's decedent.

2. In granting judgment to the plaintiff on the evidence introduced in the case through the pleadings and stipulations.

3. In entering the order of January 3, 1935, striking out the assignment of errors filed on December 12, 1934.

4. In entering the order of January 3, 1935, striking out the designation of record filed on December 12, 1934.

APPELLANT'S CONTENTIONS.

The Court Erred in Entering the Order of January 3, 1935, Striking Out the Assignment of Errors Filed December 12, 1934.

The lower Court entered judgment on October 23, 1934, and defendant immediately noted an appeal in open Court, the supersedeas bond and appeal bond being fixed at that time (Rec. p. 15). On November 5, 1934, the defendant's undertaking on appeal was approved and filed. (Rec. p. 15.)

The defendant filed its assignment of errors on December 12, 1934. (Rec. p. 18.)

Rule V (9) of this Court provides that "in a case where there is no bill of exceptions or statement of evidence the assignment shall be filed in time for inclusion in the transcript".

Rule XV (1) of this Court provides that the transcript of record shall be filed in cases "in which there is no bill of exceptions or statement of evidence within 60 days".

Since the defendant is appealing on the entire record, that is, the pleadings and stipulations filed in this case (Assignment No. 2), *there is no bill of exceptions*; and the same is not necessary.

See: *Saks v. Stinemetz & Son Co., Inc.*, 54 App. D. C. 38, 40.

The whole record shows the question presented to the Court below (Rule V (3)).

It is respectfully submitted that the lower Court erred in striking out the assignment of errors, filed on December 12, 1934, since the same was filed in ample time for inclusion in the transcript of record which had to be filed within sixty days after the perfection of the appeal, that is, sixty days from November 5, 1934.

The Court Erred in Entering the Order of January 3, 1935, Striking Out the Designation of Record Filed December 12, 1934.

Rule V (1) (g) of this Court provides that "Further, as far as possible to reduce the cost of appeals, if the appellant shall be of opinion that other parts of the record than those hereinbefore specified are unnecessary for the determination of the questions to be presented on the appeal, he *may*, by notice or order in writing to the clerk of the Supreme Court of the District of Columbia, * * * *designate the parts of the record* which he desires to be included in the transcript as sufficient for the determination of said questions, such designation to be filed with the clerk of the court within 15 days from the perfection of the appeal, * * *". (Italics supplied.)

It is respectfully submitted that the foregoing provision is intended to enable the appellant to reduce the cost of record on appeal by designating such portions thereof as is deemed essential. The time limitation of 15 days for the filing of such designation is obviously intended to permit the appellee to designate any further portions thereof which may be deemed essential, in addition to those designated by the appellant. It is therefore respectfully submitted that the said time limitation has no application to the instant case since the appeal is here taken on the entire record.

The Court Erred in Finding and Ruling that the Provision of the Group or Master Policy Granting a Grace Period of Thirty-one (31) Days to the Insured Inured to the Benefit of the Individual Certificate Holder,

The Court Erred in Granting Judgment to the Plaintiff on the Evidence Introduced in the Case Through the Pleadings and Stipulations.

These two assignments of error will be considered together since they involve a single proposition, that is, that the lower Court erred in ruling that the thirty-one (31) days grace period contained in the master policy inured to the benefit of the individual certificate holder, so as to continue said policy in effect as to plaintiff's decedent at the time of his death on September 19, 1932.

ARGUMENT.

Defendant contends that the provision of the group policy providing for a grace period of thirty-one (31) days in the payment of premiums did not continue said policy in effect for thirty-one days after August 31, 1932, when the same was terminated by express agreement of the Board and the defendant. To hold otherwise would compel the defendant to give thirty-one days of free insurance, since the Board was under no obligation to pay a premium for any period following said August 31, 1932, and in fact neither paid nor tendered any such premium. The grace period obviously has no application unless there is a mutual expectation that the policy is to continue in effect. In other words, the grace period applies only to the payment of premiums which are forthcoming and where,

as here, the policy is terminated, no more premiums being due from the Board, the grace period has no application.

The plaintiff's decedent failed to exercise the privilege of conversion contained in the individual certificate although fully informed of his rights in this regard by the letter of the Board dated July 28, 1932. Since such a provision is not self-executing and requires affirmative action on the part of the certificate holder, this provision of the individual certificate granting a conversion privilege to the certificate holder likewise did not continue the insurance in effect beyond said August 31, 1932, when the group policy was terminated by express agreement.

The defendant therefore respectfully submits that the plaintiff as beneficiary of the individual certificate acquired no rights against the defendant by reason of the death of the plaintiff's decedent on September 12, 1932.

Although group insurance is of comparatively recent origin, the reported cases definitely establish certain propositions, all of which, it is respectfully submitted, support defendant's contentions as hereinbefore set forth.

It has been generally held that the typical group life insurance policy, like that involved herein, is a contract between the employer (in this case, the Board) and the insurance company. The contract consists of the group policy and the application therefor.

Thus in *Thull v. Equitable Life Assurance Society*, (Ohio 1931) 178 N. E. 850, it was held that the contract for group insurance consists of the policy issued by the insurer to the employer and the application there-

for; the certificate delivered by the employer to the employee being no part of such contract, but only an instrument reciting the employee's right to protection under the terms of the group policy so long as the conditions of the policy are complied with.

In *Magee v. Equitable Life Assurance Society*, 62 N. D. 614, (1932), it was held that the contract of group insurance is one between the insurance society and the employer for the benefit of the employee, and the obligations of the insurance society are measured by the terms of the contract; and where an individual certificate is issued by the life insurance society, showing that the recipient thereof is entitled to insurance subject to the terms and conditions of a group life insurance policy, such certificate must be construed in the light of such "terms and conditions".

In *Davis v. Metropolitan Insurance Company*, 161 Tenn. 655, (1931), which involved the power of the employer to cancel the group policy and thereby preclude the employees from any right under the insurance contract, the Court said:

"The courts which have considered these group-policy contracts have held that the contracting parties were primarily the employer and the company. The policy is applied for by the employer and issued to the employer, and *the insuring company has no direct contractual relations with the several individual employees*. It is the employer who pays the premiums to the company, and there is no liability therefor to the company on the part of the individual employees. The rights which the employees acquire are incidental merely." (Italics supplied.)

In *Metropolitan Life Insurance Co. v. Lewis*, (La. App. 1932) 142 So. 721, it was held that the master

group policy issued to the employer is the contract which controls as to the manner of changing beneficiary, and not the certificate issued to the insured employee. The latter merely indicates that a particular employee named therein is covered by the group policy and that the person designated therein is the beneficiary thereunder.

See also: *Seavers v. Metropolitan Life Insurance Company*, 230 N. Y. S. 366 (1928);
Hardie v. Metropolitan Life Insurance Company, (Missouri 1928) 7 S. W. (2nd) 746.

The case of *Davis v. Metropolitan Life Insurance Co.*, *supra*, is direct authority on the issue involved in the present case, namely, the effect of the grace period provision contained in the master policy. In that case, the insured, the City, failed to renew the group policy at the expiration of the term, and the plaintiff, as beneficiary of an individual certificate issued under said policy, sued the insurance company, contending that the grace period provision continued the insurance through the days of grace. The Court held that under the circumstances, the group policy having been terminated by the failure of the employer City to exercise the option of renewal, there were no days of grace, and hence the company was not liable for the death of an individual certificate holder employee, who died after the termination of the master policy, but before the expiration of the grace period. The Court said:

“It must be borne in mind that *this grace provision does not contemplate free insurance*. The grace is allowed in order that the insured may have this extension of opportunity within which

to pay another premium and thus avoid forfeiture for nonpayment on the date fixed for payment. But the contemplation is that the charge accruing as compensation for a continuance of the liability will ultimately be paid. This, of course, *involves a mutual expectation that the policy contract is to be continued in force as between the parties, at least throughout the period of grace.*" (Italics supplied.)

It is respectfully submitted that this case directly supports the defendant's contention herein that the grace period provision contained in the group policy did not continue the insurance in effect for thirty-one days after its termination.

That a provision in the individual certificate granting the employee a conversion privilege is not self-executing and does not continue the insurance in effect as to him during the period during which he may exercise such privilege, is also well established by the reported cases.

In *Duval v. Metropolitan Life Insurance Co.*, 82 N. H. 543, (1927), the individual certificate contained a conversion privilege provision, practically identical with that involved herein, and the employee died after the termination of the group policy, but before the expiration of the period during which he could have exercised his privilege of conversion.

In speaking of the effect of this provision in the individual certificate, the Court said:

"It is argued that the heading 'privilege of continuance' means that the original insurance continued for 31 days, without any action taken by the insured. No such meaning can fairly be given to the expression used. *It means a favor offered to the insured, which he is at liberty to*

accept or not as he chooses. That this is its true meaning is made certain by the terms of the privilege which are distinctly stated. The party who has been insured may take out regular life insurance without medical examination. He need not furnish evidence of insurability. This is all the privilege undertakes to give." (Italics supplied.)

See also: *Fearon v. Metropolitan Life Insurance Co.*, 246 N. Y. Supp. 701 (1931).

It is therefore respectfully submitted that neither the provision in the group policy for a thirty-one day grace period for the payment of premiums, nor the provision contained in the individual certificate granting the employee a conversion privilege, operated to continue said group policy in effect as to the plaintiff's decedent, after the group policy had been terminated on August 31, 1932; and hence plaintiff, as beneficiary, acquired no rights against defendant by the death of said decedent on September 12, 1932.

CONCLUSION.

It is therefore respectfully submitted that the lower Court erred in entering its order of January 3, 1935, striking out defendant's assignment of errors and order for transcript of record on appeal; and in granting judgment to the plaintiff on the evidence introduced in the case through the pleadings and stipulations; the error being one of law clearly apparent on the face of the record.

Respectfully submitted,

JAMES S. EASBY-SMITH,
FRANK S. EASBY-SMITH,
Attorneys for Appellant.

FILED APR 10 1935

Henry W. Hodges

CLERK

IN THE

**United States Court of Appeals
for the District of Columbia**

January Term, 1935

No. 6397

UNION COOPERATIVE INSURANCE ASSOCIATION,
A Corporation, *Appellant*,

vs.

MARY BANNERMAN, *Appellee*.

BRIEF FOR APPELLEE

EDWARD F. COLLADAY,
JOSEPH C. MCGARRAGHY,
Attorneys for Appellee.

IN THE
**United States Court of Appeals
for the District of Columbia**

January Term, 1935

No. 6397

UNION COOPERATIVE INSURANCE ASSOCIATION,
A Corporation, *Appellant*,

vs.

MARY BANNERMAN, *Appellee*.

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

On October 23, 1934, trial by jury having been waived, and after the case had been fully heard by the trial court, a finding was made in favor of the appellee (plaintiff below) in the sum of \$3,000.00, with interest from September 19, 1932. *No exceptions were taken to the finding of the court*; the defendant waived the right to file a motion for a new trial and agreed that judgment might be entered on the court's finding, from which judgment the defendant noted an appeal to this court (R. 15). On November 5, 1934, the undertaking on appeal was approved and filed (R. 15).

No further action was taken by the defendant until, on December 5th, 1934, it filed a motion to extend *nunc pro tunc* the time for filing and serving its Bill of Exceptions until and including December 15, 1934 (R. 16). Said motion was presented to the Trial Justice but no formal ruling or minute entry was made thereon, the Court holding that since the time for filing the Bill of Exceptions had gone by, there was no necessity for a ruling.

Thereafter, on December 11, 1934, the defendant filed in this Court, in Original Case No. 2387, its petition praying that this Court enter an order allowing a reasonable extension of time within which to serve, file and submit to the Court below its Bill of Exceptions. Objections by the plaintiff were filed in said Original Case No. 2387 and, thereafter, on January 21, 1935, this Court denied the prayers of said petition, thus disposing of the right of the defendant to file and have settled its Bill of Exceptions in the trial court for the purposes of its appeal, the defendant having permitted the time to go by within which, under the rules, the proposed Bill of Exceptions must be served and filed in the trial court.

After the trial court had refused to rule on the motion for an extension of time to file the Bill of Exceptions and after the petition had been filed in this Court for said permission, but before said petition had been ruled upon and denied by this Court, the defendant filed in the trial court, on December 15, 1934, an Assignment of Errors (R. 18-19) and an order for Transcript of Record on appeal (R. 19).

On December 17, 1934, the defendant filed a motion to amend and correct the minute entry made on Oc-

tober 23, 1934, of the trial and judgment of the court (R. 17).

The plaintiff moved to strike the order for Transcript of Record on the ground that it was not filed within the time required by the rules (R. 19) and also moved to strike the Assignment of Errors for the same reason (R. 20).

The Court, on January 3, 1935, granted the Motions to strike the order for Transcript of Record and to strike the Assignment of Errors and denied the motion of the defendant to amend the minute entry (R. 20), and it is from these orders that the defendant noted this pending appeal to this Honorable Court (R. 21) and, based upon these orders that the Assignments of Error in support of this appeal were filed (R. 22 and 23).

Therefore, although the appellant in its brief, at page six thereof, assigns four errors, the first two errors assigned have no bearing in the pending appeal and it is respectfully submitted that with respect to the errors duly assigned and found on pages 22 and 23 of the record, the order of the court from which this appeal was taken and perfected should be affirmed.

ARGUMENT

As heretofore pointed out, the Assignment of Errors was not filed until December 15, 1934, before which date the Trial Justice had found that the time for filing a Bill of Exceptions had expired and the Court had held that it was without jurisdiction to grant a motion for an order extending the time for filing said Bill of Exceptions *nunc pro tunc*. Under Law Rule 5 of this Court, it is required that the Assignment of Errors relied upon by the appellant shall

be filed in the office of the Clerk of the Supreme Court of the District of Columbia "prior to the settling and filing of the Bill of Exceptions by the Trial Justice." Since it had theretofore been determined that the defendant was without right to file a Bill of Exceptions, it is respectfully submitted that the Court was correct in striking the Assignment of Errors.

We submit also that the Court was correct in striking the order for Transcript of Record on appeal. The record shows that the appeal was perfected on November 5, 1934, and it was not until December 15, 1934, that the order for Transcript of Record on appeal was filed. Rule 5 of this Court requires that the designation of record be filed with the Clerk of the Supreme Court of the District of Columbia "within fifteen days of the perfection of the appeal." The time for filing a designation of record in accordance with the rules expired on November 22, 1934, and since the same was not filed until December 15, 1934, we respectfully submit that the trial court was obviously correct in striking said designation of record.

A further error is assigned on page 23 of the Record, but apparently not pressed on this appeal since not contained on page 6 of the appellant's brief, to the effect that the Court erred in entering the order of January 3, 1935, refusing to amend the minute entry of October 3, 1934. Although appellant apparently does not press this Assignment of Error, we submit that the Court obviously was right in refusing to grant the motion to amend the minute entry, which motion was made on December 17, 1934, to amend a minute entry made on October 23, 1934, when law rule No. 1 of the Supreme Court limits the control of the

Trial Court over its orders, judgments and decrees to the term thereof, which "shall be treated as having expired on the 30th day following the entry thereof."

Since more than thirty days had expired after the entry of the minute in question, it is obvious that the court had no power to amend the same and was correct in denying the motion made by the appellant.

We therefore have a case where the appellant permitted the time to go by for filing its Bill of Exceptions and both the Trial Court and this Court have denied the appellant the right to file the same after the expiration of that time.

Also, the appellant failed to file its Assignment of Errors and designation of record in time and asked the Court to amend its minute entry long after the control of the Court over said minute entry had expired.

Although these matters are the only questions before the Court on this appeal, the appellant has devoted the major portion of its brief to the merits of its case, assuming that they are properly here.

We believe that the correctness of the judgment of the Court below in favor of the plaintiff is not subject to review because of failure of the appellant to comply with necessary jurisdictional requirements to bring the same before this Court in accordance with the rules of this Court and of the Trial Court.

One further and insuperable obstacle to review of the case by this Court is the failure of the defendant to note and preserve an exception to the finding of the Trial Court, in view of which failure we submit that under the decisions of this court in the case of *Darby v. The Montgomery County National Bank*, 62 W.L.R. 105, 622, the judgment must be affirmed.

Passing, however, from these reasons for affirmance to the strict merits of the case, we respectfully submit that the finding and judgment of the trial court in favor of the plaintiff was correct.

The appellant has cited State decisions with reference to contracts of group insurance in which, *under the facts in those cases*, the courts held that the claimants against the insurance companies were not entitled to recover. Generally speaking, they are cases in which the insured entered into an agreement whereby the insurance policy became cancelled as of a certain date and the holder of a certificate issued under the Master Policy was contending that the insured had no right to cancel the policy.

That is not the question in the pending case. *Here, there was no agreement to cancel the policy.* The insured, namely, the Board of Insurance Trustees of the Electrical Industry of New York, had merely notified its membership that it would not be able to pay the premium under the policy after a certain date and a copy of this notification to its members was sent to the insurance company. The fact is that after the first notice of this character was sent to its members, the insured found itself able to pay a further month's premium, did pay it, and the insurance company accepted it, following which the insured notified its members that it would not be able to pay the premium for the following month.

We submit it to be clear that if the insured had found itself able to pay the premium the following month, it would have had the right to do so just as it had done for the preceding month and the insurance company would have been required to accept said payment. Since, therefore, it would have had the right

to pay that premium for the following month, it follows that the period of grace continued in effect for that time and the plaintiff's intestate having died during said period of grace, the plaintiff is entitled to recover under the terms of the policy.

The principles involved in this case are identical with those in the case of *Providence Savings Life Assurance Society v. Taylor, et al.*, 142 Fed. 709, 713, in which the Circuit Court of Appeals for the Third Circuit, speaking through Circuit Judge Acheson, and referring to an assured's declaration that he did not intend to continue the policy, held that said declaration was not a waiver of the grace period and did not terminate his rights under the policy. Judge Acheson said:

“This declaration of the assured was without consideration, and was not binding upon him. Notwithstanding what he had said, he could still have paid or tendered before the expiration of the thirty days, the premium and the company would have had no legal right to refuse it. There is no evidence, moreover, that the company was in any wise misled by this declaration of the assured. At most, it was a mere statement of an intention, as to which the assured had the legal right to change his mind during the period of grace.”

We respectfully submit that here, as there, the assured, namely, the Board of Insurance Trustees of the Electrical Industry of New York, had the legal right to change its mind during the said thirty day period and, therefore, the period of grace was in effect for that time.

Also, the case of *McMaster v. New York Life Insurance Company*, 90 Fed. 40, is in point, in which the

Court held that where an assured was allowed, by a life insurance policy, a period of grace, after a premium became payable, as a time within which payment might be made, and during which the policy was not forfeitable, and the assured dies within such term without having made the payment, *it is immaterial to a right of recovery on the policy whether or not he intended to make the payment.*

In this last cited case, after stating conclusions in favor of the plaintiff, as reported in said decision, the Court stated that if it felt free to do so, it would find for the plaintiff, but because of a prior decision of the Circuit Court of Appeals in an equity case, that there could be no recovery on the policies, it was the duty of the Court to follow that ruling, and, therefore, "While my opinion is with the plaintiff, the judgment must be for the defendant." Appeals were prosecuted from this judgment to the Circuit Court of Appeals and there affirmed and a Writ of Certiorari was allowed by the Supreme Court of the United States. In an opinion reported in 183 U. S. 25, the Supreme Court reversed the judgment of the Circuit Court of Appeals and remanded the cause with direction to enter judgment for plaintiff, thereby sustaining the principle of law which the Circuit Court stated as recited above.

CONCLUSION

It is respectfully submitted that the judgment of the Trial Court was correct and should be affirmed.

Respectfully,

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